



EVIDENCE OF A FULL COMPLEMENT OF INFRASTRUCTURE, AS DEFINED BY THE COASTAL BARRIER RESOURCES ACT OF 2000, IN NORTH TOPSAIL BEACH, NORTH CAROLINA

■ **BACKGROUND**

The Coastal Barrier Resources Act (CBRA) of 1982 designated relatively undeveloped coastal barriers along the Atlantic and Gulf Coasts—later including parts of Puerto Rico, the U.S. Virgin Islands, the Great Lakes and the Florida Keys during the 1990 reauthorization—as part of the Coastal Barrier Resources System (CBRS) in order to remove the incentive to develop coastal barriers by limiting Federal expenditures and financial assistance to designated CBRS units.

In 1981, DOI was directed by the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) to map undeveloped coastal barriers for Congressional consideration. In response, DOI published a notice of proposed action in the Federal Register on August 16, 1982, titled “Federal Flood Insurance Prohibition for Undeveloped Coastal Barriers; Proposed Identification and Submission of Report to Congress” (47 FR 35696). This provided the definitions and delineation standards of undeveloped coastal barriers that guided DOI mapping efforts and is still used to guide FWS mapping and CBRS unit review efforts today.

To provide additional clarification and guidance to FWS and the public on what should be considered an undeveloped coastal barrier, some of the criteria outlined in the Federal Register on August 16, 1982, was later codified in Section 2 of the “Coastal Barrier Resources Reauthorization Act of 2000,” (CBRRA) which specifies that, at the time of the inclusion of a System unit within the System, a coastal barrier area is considered undeveloped if:

- “(A) the density of development is less than 1 structure per 5 acres of land above mean high tide; and
- (B) there is existing infrastructure consisting of—

- (i) a road, with a reinforced road bed, to each lot or building site in the area;
- (ii) a wastewater disposal system sufficient to serve each lot or building site in the area;
- (iii) electric service for each lot or building site in the area; and
- (iv) a fresh water supply for each lot or building site in the area.”

The corresponding report language (Senate Report 106-252) states:

“Section 2(1) amends the Coastal Barrier Resources Act by establishing a set of criteria to serve as a guide to the Congress, the U.S. Fish and Wildlife Service, and the public to determine whether a coastal barrier should be considered developed, and therefore excluded from the CBRS. The criteria are based on a rule that was proposed by the Department of the Interior in August of 1982, but was never finalized (47 FR 35696). Despite never being finalized, the proposed rule has long served as a guideline for Congress and the Fish and Wildlife Service when they review suggested changes to the CBRS. In accordance with the proposed rule, this section would consider an area developed if it has more than 1-structure per 5-acres, or a full complement of infrastructure--which is defined to include water supply, wastewater disposal, electricity, and paved roads.”

The original 1982 mapping and subsequent 1990 additions to the CBRS included sections of the Town of North Topsail Beach, North Carolina (TNTB), in CBRS Unit L06. However, sections of the Unit that include TNTB should not have been included because the Town had a full complement of infrastructure in place prior to the mapping and designation of the Unit on October 18, 1982. According to the criteria outlined in CBRRA, Senate Report 106-252, and the following guidance from the 1982 proposed rule, TNTB meets the criteria for having a full complement of infrastructure:

“All or part of a coastal barrier will be considered developed, even when there is less than one structure per five acres of fastland, if there is a full complement of infrastructure in place. This is consistent with the clear intent of Congress on this point (*Congressional Record*, July 31, 1981, p. H5793). A full complement of infrastructure requires that there be vehicle access (i.e., improved roads or docks) to each lot or building site plus reasonable availability of a water supply, a wastewater disposal system, and electrical service to each lot or building site. Ability to use on-site wells and/or septic systems on each later building site in a development, when legally authorized and the normal practice in the vicinity, will constitute water supply and sewage infrastructure since they can be drilled and/or installed concurrently with the construction of the structure. The presence on a coastal barrier of a single road, or even a through highway, plus associated electric transmission and water and sewer lines in this highway corridor does not constitute the necessary full complement of infrastructure necessary to support development. (House Report 97-158, Vol. 1, June 19, 198, p. 100; and *Congressional Record*, July 31, 1981, p. H5793.)”

▪ EVIDENCE OF A FULL COMPLEMENT OF INFRASTRUCTURE

When CBRs units were originally mapped, those areas with a full complement of infrastructure (roads, water infrastructure and electric lines) were considered developed and thus were not designated as being within the CBRs. However, development status was determined primarily on the density of visible structure as seen from aerial photography. According to a July 28, 1982, memo from the Coastal Barrier Task Force to the Secretary of the Interior on the Interim Proposed Undeveloped Coastal Barrier Designation for Topsail Unit L06, the Task Force states:

“Aerial photography taken April 30, 1982, verifies the existence of the components including a linear beach feature, sand dunes, and landward aquatic habitat within the area proposed for designation as an undeveloped coastal barrier. In addition, those aerial photographs confirm the lack of sufficient structure and other facilities or visible impacts to consider the area proposed for designation developed as defined by statute.”

This aerial examination method did not reveal significant development that was actually on the ground. TNTB was developed well before 1982. A thorough examination of records and documentation shows that TNTB had a full complement of infrastructure that meets the requirements outlined in 47 FR 35696, CBRA and CBRRA.

There was significant investment in infrastructure by the North Topsail Water and Sewer Corporation and Onslow County prior to the Congressional designation of Topsail Unit L06 on October 18, 1982. In 1978, Onslow County developed coastal guidelines for zoning and development that required infrastructure to be in place before construction could begin on residential lots at North Topsail Beach. North Topsail Water and Sewer Corporation began constructing, operating, and maintaining water, sewer and street treatment in 1979. These infrastructure improvements were available to each of the lots in the January 15, 1982, zoning maps.

As required by CBRRA, a road with a reinforced road bed and electrical service was in place to each lot, and wastewater and water supply infrastructure sufficient to serve each lot was constructed by the North Topsail Water and Sewer Corporation. The infrastructure was placed down the main road (consisting on NC Highway 210 and State Route 1568/New River Inlet Road) with the majority of lots abutting the infrastructure. No private drives or individual septic systems were necessary until the houses were constructed. Water supply lines were installed prior to 1982 within the same highway right of way. Those lines served every lot or building site in TNTB. Groundwater sources for water wells were readily available to supplement the water supply. Electrical lines suspended on telephones poles were installed before 1982 along the length of NC Highway and New River Inlet Road, supplying power to every lot or building site in TNTB. Since 1979, all lots had direct access to sewer services. In addition, the sandy soils on TNTB would “perk,” so the installation of septic systems has always been available to lots where sewer lines were not already installed.

Due to the island’s narrow configuration with the infrastructure down the middle, this full complement of infrastructure was readily available to each lot. As a result, there were

approximately 490 existing housing units in TNTB by the end of 1981. 100 additional units were constructed in 1982.

According to the 1982 zoning maps, approximately 796 lots are on the main road. Each lot could connect directly to electrical, sewer and water service. Records of the zoning authority at that time indicate that 590 structures were approved before 1982, that those approvals would not have been issued but for direct access to water and sewer, and that each TNTB lot or building site had that direct access.

The adequacy of infrastructure is shown clearly by the fact that the original CBRA Unit L06 map in 1982 excluded from the CBRS two housing developments at the extreme north end of New River Inlet. These developments were made possible because of the existing highway, electric and water infrastructure, and the ready-availability of installing private drives and septic systems.

Therefore, the infrastructure requirements outlined in Sec. 2 of CBRRA have been met for the entire Town. Prior to the passage of CBRA in 1982, TNTB had existing infrastructure consisting of:

1. a road, with a reinforced road bed, to each lot or building site in the area (NC 210 and New River Inlet Road);
2. a wastewater disposal system sufficient to serve each lot or building site in the area (North Topsail Water and Sewer Corporation infrastructure);
3. electric service for each lot or building site in the area (Jones-Onslow Electric Membership Corporation infrastructure); and
4. a fresh water supply for each lot or building site in the area (North Topsail Water and Sewer Corporation infrastructure).

While this information specifically documents on-the-ground infrastructure, the 1979 North Topsail Water and Sewer utility project also meets the “phase development” criterion set for by DOI in the 1982 proposed rule. The project was well documented to provide water and sewer lines to West Onslow Beach. It was privately capitalized and continuously owned by one entity. The project involved well over 100 lots and multiple phases were complete prior to CBRS designation.

The Town of North Topsail Beach should be placed outside of CBRS boundaries because it had a full complement of infrastructure in place by 1982. CBRA and CBRRA requires coastal barrier areas served by a full complement of infrastructure be deemed developed and thus not designated as part of the CBRS. (To access the full Infrastructure Analysis prepared by TNTB, please visit: <http://www.ntbnc.org/Pages/CBRADocuments.aspx>.)

TNTB has proposed new boundaries for CBRS Unit L06 which excludes areas the Town has found to have a full complement of infrastructure by 1982. To maintain the integrity of CBRA, TNTB has also proposed that an additional 659 acres of undeveloped wetland be included in CBRS Unit L06 (191 of which is currently zoned for development and 468 of which was proactively designated in conservation zones due to increased developer interest), keeping the unit at 6,043.5 acres. In accordance with the Town’s adopted Land Use Plan, conservation zones can never be rezoned for development, making this land protected from future incursions of

development. In the spirit of CBRA, the Town has placed 60 percent of its total land acreage in conservation zoning and restricted development to 30 percent of residentially-zoned properties, in full understanding of the importance to preserve the natural aspects of barrier islands.

▪ FWS RESPONSE

Secondary Services

TNTB submitted infrastructure documentation to FWS during a 2009 request for comment on its *Report to Congress: John H. Chafee Coastal Barrier Resources System Digital Mapping Pilot Project* (Report), in which the Topsail L06 Unit was remapped. The pilot project was created due to limitations and problems associated with the existing set of CBRS maps. The resulting report contained draft maps for 65 CBRS units and described the results of the pilot project and a framework for modernizing the remainder of the CBRS maps. The “remap” of L06 made minimal changes, and did not address the issue that nearly the entire Town is in the CBRS (the final version of the Report was released in 2016).

FWS determined that infrastructure must already be physically located on each lot or building site in order to meet the development criteria of CBRRA. **On page D-14 of the Report, FWS acknowledged that sewer and water lines were installed along the main roads and primary electric service was available**, but said “secondary services were not constructed until the lots were developed.” **In 2006, an internal FWS infrastructure analysis completed for North Topsail Beach (which consisted of a series of emails and other correspondence to utilities in the area) also confirmed the presence of sewer and water lines along the main roads and primary electric service availability to all lots.**

CBRRA makes a clear distinction between “lot” and “building site.” TNTB disagrees with the interpretation that reasonable availability of service to a “lot” or “building site” is not met unless lines and/or equipment are constructed to non-existing structures. TNTB is not aware of any language in CBRA, CBRRA or 47 FR 35696 that defines, discusses or requires “secondary services.” Since the majority of lots directly abut NC 210 and New River Inlet Road, where the water, sewer and electric infrastructure were placed, the infrastructure is reasonably available to each lot.

A similar situation occurred in 1982 in Nags Head, North Carolina. During the January 1982 comment period for the *Draft Environmental Impact Statement: Undeveloped Coastal Barriers and Flood Insurance*, Representative Walter Jones Sr. submitted the following comment regarding the proposed designation of Nags Head, North Carolina:

“There is infrastructure in place. Two roads access the area and power and water are available. This area can be developed simply by tapping these lines; no new roads are necessary. Individual lots are served by septic tanks which are installed at the owners’ expense.”

As Chairman of the authorizing committee, the House Committee on Merchant Marine and Fisheries, Representative Jones made it clear that the intent of Congress was not to create an additional requirement of “secondary service” on top of the stated “reasonable availability” of water supply, a wastewater disposal system and electrical service. Moreover, in the directions

provided to DOI in the Omnibus Budget Reconciliation Act of 1981 House Report, Congress stated that: “An area that has a full complement of infrastructure (i.e., some combination of roads, water, sewers, electrical lines, etc.) but not structures, suggests that the area is as a practical matter already developed” (House Report 97-158, Vol. 1, p. 100).

Single Road or Through Highway

Another common response from FWS is that the infrastructure on North Topsail Beach was placed along the main road, which FWS equates to being a “highway corridor.” FWS refers to proposed 1982 guidance (47 FR 35696) which states that: “The presence on a coastal barrier of a single road, or even a through highway, plus associated electric transmission and water and sewer lines in this highway corridor does not constitute the necessary full complement of infrastructure necessary to support development.” The terms “through highway” and “highway corridor” suggest a highway with limited direct access from private lots. Due to the island’s narrow configuration, the infrastructure was placed down the main road (consisting on NC Highway 210 and State Route 1568/New River Inlet Road) with the majority of lots directly abutting the infrastructure; therefore, the infrastructure was readily available to each lot or building site. There was no restricted access to these roads from lots or building sites, as would be the case if NC Highway 210 and State Route 1568/New River Inlet Road were “through highways” or “highway corridors.”

Further, this same infrastructure provided service to lots in the southern half of the TNTB, which were *not* included in the CBRS, and two developments in the northern half, which were excluded from CBRS Unit L06. In the case of the southern half of TNTB, NC Highway 210 was not considered a “single road,” “through highway” or “highway corridor,” even though the same infrastructure serving the southern half of TNTB was also serving the northern half of TNTB.

• CONCLUSION

An error has occurred in the mapping of the Town of North Topsail Beach in CBRS Unit L06, which needs to be corrected.